

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports & Certifications)	WC Docket No. 14-48
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

**STEELVILLE TELEPHONE EXCHANGE, INC.
PETITION FOR WAIVER OF PROCEDURAL RULE**

Steelville Telephone Exchange, Inc., a rate-of-return local exchange carrier (“LEC”) providing telephone exchange service, exchange access service, Internet access service, and related telecommunications and information services, in a rural study area in the state of Missouri (“Steelville”), hereby requests relief under the Commission’s procedural rule governing eligibility for high-cost support under the Alternative Connect America Fund cost model (“A-CAM”). Given the shortness of time until final elections must be made under the A-CAM, Steelville respectfully requests expedited processing of this petition.

I. Background

On March 30, the Commission released a Report and Order adopting a voluntary path for rate-of-return LECs such as Steelville to make the transition to model-based support under the A-CAM.¹ The Commission ruled, *inter alia*, that every rate-of-return receiving legacy high-cost loop support would “have the opportunity to voluntarily elect, on a state-wide basis, to receive Connect America Fund-Alternative Connect America Cost Model (CAF-ACAM) support

¹ *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, Report & Order, Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, ¶20 *et seq.* (2016) (the “A-CAM Order”).

as calculated by the [A-CAM] adopted by the Commission” in lieu of high-cost loop support calculated pursuant to Part 54, Subparts K and M of the Commission’s rules.² The Commission’s goal was to provide incentives for these carriers to transition to support based on forward-looking efficient costs, while providing an opportunity for carriers that have made less progress than their peers in deploying broadband at 10/1 Mbps (minimum) speeds throughout their study areas to “catch up.”³ Carriers that elect A-CAM support will be subject to incentive regulation rather than cost-based rate-of-return regulation for their common line offerings.⁴

The procedure for A-CAM eligibility is the subject of this Petition. In the A-CAM Order, the Commission delegated to the Wireline Competition Bureau authority to issue a Public Notice showing the A-CAM support available in each state, along with the corresponding performance obligations, and inviting LECs to make their election.⁵ The Commission also limited support to areas lacking qualifying broadband as of a fixed date: “we will not make the offer of model-based support to any carrier that has deployed 10/1 broadband to 90 percent or more of its eligible locations in a state, based on June 2015 FCC Form 477 data *that has been submitted as of the date of release of this Order.*”⁶ This is the procedural rule that Steelville requests the Commission waive in order that the Commission may base Steelville’s eligibility for A-CAM on *correct* Form 477 data, filed since March 30, rather than incorrect data that was on file as of March 30.

² 47 C.F.R. §54.311(a).

³ A-CAM Order ¶20.

⁴ *Id.* ¶21.

⁵ *Id.* ¶64. The Bureau has since announced offers of A-CAM-based support and permitted LECs until November 1, 2016 to make their elections. “Wireline Competition Bureau Announces Support Amounts Offered To Rate-of-Return Carriers To Expand Rural Broadband,” Public Notice, WC Docket No. 10-90 (WCB rel. Aug. 3, 2016). Steelville does not seek a waiver of that November 1st deadline.

⁶ *Id.* ¶66 (emphasis added).

II. Discussion

The Commission may waive any of its rules for good cause where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission's purposes than strict enforcement of the rule.⁷ In considering the merits of a waiver, the considerations of hardship, equity, or more effective implementation of overall policy on an individual basis must be taken into account.⁸

Special circumstances are present in this case. The June 2015 FCC Form 477 data on file as of March 30 presents an inaccurate picture of the extent of 10/1 Mbps broadband deployment in Steelville's LEC service territory. This is because, first, due to circumstances beyond Steelville's control, Steelville was unable to provide accurate 10/1 Mbps broadband deployment information as of the June 30, 2015 filing deadline; and second, Steelville required more than nine months to compile accurate broadband deployment information.

The Requirement to Report 10/1 Mbps Availability On Form 477 Has Taken On New Significance For A-CAM Purposes. When Steelville submitted its June 2015 FCC Form 477 it was aware that it was filing data that did not accurately depict where it had 10/1 Mbps broadband capability. Steelville is a small company with limited resources. The company reported the maximum speeds of its broadband offerings across all census blocks, as appeared to be required under the instructions for FCC Form 477. Steelville derived this information from its billing system, which indicated merely the "top speeds reported" and could not provide actual maximum guaranteed speeds available on a census block-specific basis. At that time, the company could not verify whether broadband meeting the FCC's minimum standards was actually available in

⁷ 47 C.F.R. §1.3. See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁸ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

any particular census block or at any individual location (other than the locations where it had a current broadband subscriber).

Steelville contacted Wireline Competition Bureau personnel prior to the September 1, 2015 due date for guidance as to how best to comply with the Form 477 broadband reporting requirement. Steelville inquired as to the possibility of an extension of time. Steelville was advised to file whatever data it had as of June 30, in order to comply with the filing requirement in a timely manner, and to submit a revised Form 477 for that period once the company had more accurate data. At that time, Steelville had no way of knowing that the Commission would decide in March 2016 to rely on that June 30, 2015 FCC Form 477 data to calculate whether Steelville was eligible for the A-CAM.

The Bureau's Model Captured Inaccurate Census Blocks and Locations For Steelville. A second reason for the inaccuracy of the inputs on which the Bureau relied in determining A-CAM eligibility, also beyond Steelville's control, was the mismatching of census blocks in the model, and the failure to include census blocks that Steelville actually does serve. From an initial report of roughly 826 census blocks in Steelville's LEC service area under the A-CAM, the revised data show there are about 1,193 census blocks in the company's service area. From approximately 3,627 supported locations under the A-CAM (based on June 2015 477 data), the revised data demonstrate that about 3,730 locations should be eligible for support. Rather than being broadband-capable in more than 90 percent of the eligible locations in its service area, Steelville now believes it is closer to 34 percent broadband-capable.⁹

Providing Accurate, Location-Specific Information About 10/1 Mbps Broadband Availability Required Extraordinary Efforts By Steelville. The determination of which locations

⁹ Declaration of David C. Blessing (attached) ¶¶2-3.

in which census blocks were broadband-capable at 10/1 Mbps required an extraordinary effort and expense for Steelville. After realizing that some physical addresses and locations in the service area were being lumped together in the billing system creating gaps in the service area, the company essentially had to start with nothing and re-map the service area. The process was burdensome and time-consuming, as it required referencing all existing connections and their distance from the 72 DSL remote sites in order to draw accurate boundaries. Broadband speeds were calculated based on cable footage from the remote sites and then evaluating actual subscriber service locations and their distance to remote sites. After the locations were mapped by Steelville, an outside mapping company assisted with verifying accurate census block information. Steelville was then able to accurately determine which locations were broadband-capable at 10/1 Mbps. The process was completed in August 2016. As of August 17, that information is on file with the Commission. Steelville also updated its December 2015 Form 477 data on August 4, 2016.

The Commission Should Refresh The Record Based On the Revised 477 Data So Eligibility Determinations Are Accurately Based. The Commission established the A-CAM election to encourage broadband deployment in ROR service areas where broadband availability has not kept pace with the rest of the nation. The Commission, for good reason, strove to ensure that eligibility for support would be based on accurate information.¹⁰ The Commission's own rule expresses the expectation that each LEC "shall have the opportunity to voluntarily elect" support calculated by the A-CAM and the accompanying regulatory regime.¹¹ Denying Steelville that opportunity based on inaccurate 477 data would disserve the Commission's goals

¹⁰ See, e.g., A-CAM Order ¶71 (ordering the Bureau to update the A-CAM results using the June 2015 477 data rather than the December 2014 data which had been the basis of the A-CAM results until that point).

¹¹ 47 C.F.R. §54.311(a).

in this proceeding. Conversely, granting the limited waiver requested herein would better serve the purposes of the A-CAM election regime established by the Commission in the A-CAM Order than strict enforcement of the rule.¹² Steelville therefore should be permitted to make its A-CAM election based on accurate information from its revised FCC Form 477 for June 30, 2015, filed August 17, 2016.

Grant of the Requested Relief Would Do No Harm. Grant of a waiver sometimes requires the Commission to balance benefits and burdens among different parties. This is not such a case. Because the November 1 date for carriers to elect A-CAM based support is still almost two months ahead, permitting Steelville to opt into A-CAM support would cause little disruption to other LECs and to the fund as a whole. Granting this petition simply puts Steelville and other LECs in the same position in which they would have been, had Steelville's 477 data been updated by March 30, 2016.

Moreover, while compliance with FCC deadlines is important to the Commission, enforcement of the rule in this case would not further any Commission purpose. Steelville filed a timely June 30, 2015 Form 477 – and it had no way up to that point to gather more precise broadband deployment data than it provided in that report. In the succeeding 14 months the company managed to complete a burdensome, comprehensive survey of its network capability, meaning that it now has provided, and on a going-forward basis it will be providing, more detailed and accurate information to the Commission.

In short, this is not a case where strict enforcement of the rule is necessary to bring a company into compliance or encourage future compliance. Rather, grant of the requested waiver will address a hardship worked by the rules on one very small carrier, allowing Steelville to elect

¹² See *Northeast Cellular Telephone Co.*, 897 F.2d at 1166.

A-CAM as other rate-of-return carriers have been allowed to do, based on their actual broadband deployment, rather than inaccurate information. Grant of this petition thus will permit more effective implementation of the Commission's policies embodied in the A-CAM Order, while doing no damage to Commission procedures or any other party.

III. Conclusion

For the foregoing reasons, Steelville urges the Commission, through the Bureau, to permit recalculated of the company's A-CAM eligibility using the revised FCC Form 477 data for June 30, 2015. Because time is of the essence, Steelville respectfully requests expedited processing of this petition.

Respectfully submitted,



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